



BALCH & BINGHAM LLP

Alabama • Mississippi • Washington, DC

Robin G. Laurie
(334) 269-3146

Attorneys and Counselors
The Winter Building
2 Dexter Avenue
P.O. Box 78 (36101-0078)
Montgomery, Alabama 36104-3515
(334) 834-6500
(334) 269-3115 Fax
www.balch.com
(866) 736-3859 (direct fax)
rlaurie@balch.com

October 31, 2003

BY HAND DELIVERY

Mr. Walter Thomas
Secretary
Alabama Public Service Commission
RSA Union Building
8th Floor
100 N. Union Street
Montgomery, Alabama 36104

**Re: Petition For A Declaratory Order Regarding Classification Of IP Telephony
Service, Docket No. 29016**

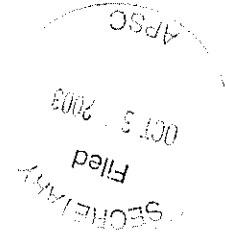
Dear Mr. Thomas:

Enclosed herewith for filing is the original, along with 10 copies of the initial comments of AT & T. Thank you

Very truly yours,

Robin G. Laurie

RGL:amc
Enclosure



**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

IN RE:

Petition For A Declaratory Order)	
Regarding Classification Of IP)	DOCKET NO. 29016
Telephony Service)	

APSC
OCT 3 2003
Filed
SECRETARY

INITIAL COMMENTS OF AT&T

The Alabama Public Service Commission (the Commission) has requested comments from interested parties concerning “the various forms of IP Telephony Service and the jurisdictional issues related thereto.” In addition, the Commission seeks comments regarding matters raised by the Petition for Declaratory Order Regarding the Classification of IP Telephony Service filed on July 31, 2003 on behalf of a group of incumbent local exchange companies (ILECs).

The fundamental issue raised by the Order Establishing Declaratory Proceeding and the ILEC Petition is whether this Commission should attempt to regulate “Voice over Internet Protocol” (VoIP) services. The answer is that, regardless of whether the Commission possesses jurisdiction over VoIP, it should refrain from asserting that jurisdiction and regulating VoIP services at this time.

At the outset, the Commission must recognize that, regardless of whether a particular VoIP call is intrastate or interstate in nature, VoIP itself is not – and should not be treated as – a telecommunications service. Rather, as the FCC has previously determined, all forms of VoIP should continue to be treated as information services. As such, VoIP traffic is not subject to carrier access charges.

VoIP is a nascent technology. There appear to be only a few companies that currently are utilizing some form of packet switching or internet routing as a means of offering retail voice services to end-users, and even these companies appear to be serving only a minimal number of residential customers nationwide. The VoIP services that are being offered also appear to be more limited in scope than “traditional” wireline voice services. Moreover, there does not appear to be any single “form” of VoIP service, as the technologies involved may range from computer-to-computer telephony, to calls originating through broadband connections which are terminated on the circuit-switched network, and to traffic which involves Internet-protocol conversion and packet transport in the “middle” of the call.

In short, VoIP is just in its earliest stages of development. Clearly, VoIP is not a mass market alternative to traditional wireline local exchange services, nor is it a replacement for the existing competitive alternatives to those services, particularly the unbundled network elements platform. Nevertheless, VoIP holds the potential for providing additional consumer choice, helping spur increased demand for broadband services (which, in turn, would motivate the increased deployment of broadband services and availability in Alabama), and ultimately transforming the way we communicate..

That potential, however, would be adversely affected by the imposition of unnecessary regulatory requirements and inflated charges, such as ILEC carrier access charges, on these nascent services. Indeed, the premature regulation of VoIP would only stifle the innovation necessary to enable these services to develop and grow. The Commission should thus refrain at this time from exercising jurisdiction over VoIP services. At a minimum, the Commission should avoid any action related to VoIP

pending the FCC's consideration of this matter in two pending dockets, specifically the generic Intercarrier Compensation rulemaking proceeding¹ and the AT&T Declaratory Petition concerning "phone-to-phone" IP calls.² The outcome of these dockets should assist this Commission in making a fully informed decision regarding VoIP.

A. BACKGROUND

As previously stated, VoIP is currently being addressed by the FCC. Therefore, this Commission's examination of the issue should be considered in relationship to the FCC's analysis of pertinent nationwide standards and legal rules. To place the issues in context, it will be helpful to describe the history of VoIP at the federal level, including: (1) the ISP exemption, (2) the Internet and VoIP communications, (3) the FCC's 1998 *Universal Service Report* and the contemporaneous statements of individual Commissioners, and (4) subsequent developments.

1. ISP Exemption – Under the Communications Act of 1934, the FCC has given providers of enhanced and information services (ISPs) the option of acting as end users and subscribing to flat-rated business line and other local end user services.³ The FCC originally adopted this exemption in 1983 as a temporary measure that would protect the financial viability of the then-fledgling ISPs and that would eventually be phased out and eliminated.⁴ But following the enactment of the Telecommunications Act of 1996 (the Act), the FCC found that the exemption served more fundamental purposes

¹ See Intercarrier Compensation, Notice of Proposed Rulemaking, 16 FCC Rcd. 9610 (2001).

² *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges*, WC Docket No. 02-361 (FCC, October 18, 2002).

³ See, e.g., *MTS and WATS Market Structure*, 97 FCC2d 682 (1983),

⁴ *id*

and that it should apply permanently, pending the adoption of new federal arrangements applicable to advanced services.

The Court of Appeals for the Eighth Circuit upheld the permanent ISP exemption and rejected the claim that it generally gave rise to unlawful discrimination between interexchange carriers (IXCs) and ISPs.⁵

2. The Internet and VoIP Communications – The public Internet comprises a number of Internet “backbone” facilities, most if not all of which have websites and numerous ISPs connected to them and that are interconnected to one another through peering arrangements. AT&T WorldNet is an ISP, and AT&T also owns and operates one of the world’s largest “common” Internet backbone facilities. It carries the traffic of AT&T’s ISPs and transmits public Internet traffic generally.

The Internet transmits information in Internet Protocol (IP). IP networks break information into individual packets at the point of origination, separately route the packets over Internet backbone or other transmission facilities, and reassemble the packets and the message at the terminating end.

Although the Internet was developed to transmit data, voice signals can be converted into IP packets, and transmitted over Internet backbone or other IP networks along with all other IP data (e.g., graphics, video, audio). By installing microphones and software in PCs that translate voice signals into IP packets and vice versa, users of ISP services have long had the ability to place “computer-to-computer” voice calls over the Internet – without their ISP ever knowing it. The calling party’s PC would convert his or her voice into IP packets, and these would be transmitted over phone lines and the

⁵ *Southwestern Bell Telephone Company v. FCC*, 153 F.3d 523, 542 (8th Cir. 1998).

Internet to the called party's PC, where they would be converted from IP packets back to voice signals. In essence, voice is simply just one more application that is available over the Internet.

But these "do-it-yourself" computer-to-computer calls were exceedingly limited in utility and of very poor quality. Real time computer-to-computer voice communications can only occur among persons who are on-line at the same time with active Internet connections. Further, the resulting transmissions were characterized by irregular delays, gaps, and garbled sounds because the Internet backbone facilities did not have the addressing, routing and other control systems that allow the kinds of high quality voice transmissions the circuit switched services produce. To produce that quality would require substantial investments in specialized IP infrastructure (including gateways, access routers, gatekeepers, directory servers and accounting servers) to track each voice transmission and assure it is disassembled and reassembled accurately and in real time. The gateway facilities also participate in and/or perform conversions of voice signals back and forth between circuit switched voice protocol (TDM) and IP as part of enabling calls to be placed to and from ordinary phones, thus permitting the integration of the PSTN and the Internet.

While circuit switched transmissions dominate interexchange voice now and will do so for the foreseeable future, investments to allow quality voice over IP – and the expansion of the capacity of IP networks to handle increased voice usage – have tremendous potential. By allowing voice and data to be transmitted over a single network, these investments can produce enormous efficiencies by allowing the integrated

provision of an array of voice, data and enhanced services.⁶ But these future services will not develop unless providers first develop the capability to offer high quality voice services over Internet backbone facilities or other IP networks, and that requires that there be an initial economic reason to make the necessary investments. Allowing VoIP providers to subscribe to local services, rather than to be subject to excessively high access charges, would prevent economic disincentive for such investment from inhibiting the growth of the Internet.⁷

Beginning in the mid 1990's certain firms began to make investments that created limited capacity to provide quality voice services over the Internet or other networks using Internet Protocol. In addition to allowing higher quality voice computer-to-computer calls, these services allow voice calls to be placed from computers to ordinary touch-tone or rotary dialed phones, from phones to phones, or from phones to computers by using "gateways" to perform necessary conversions from circuit switched voice protocol (TDM) to Internet protocol.

Shortly after these investments were made, certain entities began to experiment with VoIP services. One notable example is Vonage, which offers such services today. Vonage has been cited as a leading example of the emergence of this kind of voice communication. Nevertheless, despite all the press, the combined number of consumers served by Vonage and its competitors, combined, today accounts for less than 100,000 customers across the country.

⁶ Probe Research, Inc., *VoIP Connectivity for the Enterprise*, 3 Advisory, Insight and Market Strategy (AIMS) Service Report 1-14 (2002) ("2002 Probe Research Report"); Probe Research, Inc., *Voice over Packet Markets*, 2 CISS Bulletin 11-16-01 ("2001 Probe Research Report").

⁷ See, 2002 Probe Research Report, at 6-7, 31-32; 2001 Probe Research Report, at 11.

3. The 1998 Universal Service Report⁸ -- The FCC issued this report to address the question of whether and to what extent services offered over the Internet should contribute directly to universal service support. Because § 254⁹ requires mandatory support to be provided only by “telecommunications services”, this analysis turned on whether particular services were classified as “information services” or “telecommunications services”¹⁰. The *Report* addressed the emerging voice over Internet Protocol services and discussed not only whether they are telecommunications services that must provide explicit USF support under § 254, but also the separate question of how the services should be regulated and, in particular, whether they must pay access charges.

The *Report* described VoIP as services that “enable real-time voice transmission using Internet Protocols” and that it can be “transmitted along with other data on the ‘public’ Internet or routed over private data or other networks that use Internet Protocol.”¹¹ The *Report* identified two basic ways in which the services are offered: (1) computer-to-computer services in which calls are transmitted end-to-end in IP protocol, with the computers on each end performing the protocol conversion from voice to IP and back¹² and (2) services that employ gateways that perform necessary protocol conversion

⁸ *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11,501, ¶¶ 13-15, 1998 (*Universal Service Report* or *Report*)

⁹ 47 U.S.C. § 254.

¹⁰ *Universal Service Report*, ¶ 32.

¹¹ *Id.* ¶84.

¹² *Id.* ¶87.

and allow users to “call from their computer to telephones connected to the public switched network or from one telephone to another.”¹³

But the *Report* addressed the tentative classification of only the two types of VoIP configurations in which the IP network effects no change in protocol or format: the computer-to-computer calls (that enter and exit the network in IP) and the phone-to-phone calls (that enter and exit in TDM protocol).

In the case of computer-to-computer calls, the *Report* stated that regardless of whether these services are “telecommunications”, the ISPs whose services enable these calls to be made do not appear to be providers of “telecommunications services”, insofar as they do not hold themselves out as providing telecommunications services and may not even be aware that their services are used for telecommunications.¹⁴ The *Report* did not address the computer-to-computer calls that use capabilities that are actively marketed or promoted by ISPs or other service providers.

By contrast, the FCC observed the opposite for “phone-to-phone” IP voice communications, which it defined as services: (1) in which the provider holds itself out as providing voice communications, (2) which use the same CPE as ordinary phone calls, (3) which allow customers to call telephone numbers assigned in accordance with the North American numbering plan, and (4) which transmit information without change in content or format.¹⁵ The FCC stated that such services appear to “bear the characteristics of telecommunications services.”¹⁶

¹³ *Id.* ¶84.

¹⁴ *Id.* ¶87.

¹⁵ *Id.* ¶88.

¹⁶ *Id.* ¶89.

However, the FCC emphasized that these were all *tentative* determinations that addressed “emerging services” and that it could not make “definitive pronouncements” until it had a more complete record “focused on individualized service offerings.”¹⁷ It noted that there are a “wide range of services that can be provided using packetized data and innovative CPE” and that future proceedings would have to determine if its tentative definitions had “accurately distinguish[ed] between phone-to-phone and other forms of IP” communications and were not “likely to be quickly overcome by changes in technology.”¹⁸ The *Report* stated that future proceedings would also address the regulatory obligations that would apply to “phone-to-phone” providers if they were held to be providing “telecommunications services” and thus to be “telecommunications carriers.”¹⁹ The FCC acknowledged that there was one necessary consequence to such a classification, for providers of telecommunications services “fall within section 254(d)’s mandatory requirement to contribute to universal service mechanisms.”²⁰

But the FCC recognized that even if it were to classify phone-to-phone IP voice communications as a “telecommunications service” in the future, that would *not* mean that the services would automatically be subject to the same rules, regulations and other regulatory requirements as circuit switched interexchange services.²¹

¹⁷ *Id.* ¶90.

¹⁸ *Id.*

¹⁹ *Id.* ¶91.

²⁰ *Id.* ¶92.

²¹ *Id.* ¶91.

FCC Commissioner Furchgott-Roth dissented from the Commission's *Report*. He stated that even tentative distinctions between computer-to-computer and phone-to-phone services were arbitrary because phones could be developed that perform the same protocol conversions as computers and that there could be no rational basis to subject one service to a "tax" but not the other.²² Commissioner Michael Powell separately concurred. He expressed concern that even the tentative classifications went too far, noting that the "infinite flexibility of IP switched networks" meant that distinctions between voice and data were "difficult if not impossible to maintain."²³ He stated that it could "stifle innovation and competition in direct contravention of the Act" if "innovative new IP services" were "all thrown into the bucket of telecommunications carriers" and subject to the same "regulations and their attendant costs."²⁴

4. Subsequent Developments – Providers of IP voice communications services and others²⁵ understood the *Report* as holding that phone-to-phone and other IP telephony services would be subject to the ISP exemption – either *de jure* or *de facto* – until the conclusion of future proceedings addressing whether a change is in the public interest. They therefore continued to use end user or other local services to terminate and in some cases to originate VoIP communications services.

In the ensuing years, there has been slow growth in phone-to-phone and other VoIP services. Net-2-Phone, Genuity, Level 3, Verizon and other firms have developed

²² *Universal Service Report* at 11,636-37 (1998) (Furchgott-Roth, Commissioner, dissenting in part)

²³ *Id.* At 11,623 (Powell, Commissioner, concurring).

²⁴ *Id.*

²⁵ See Testimony of Chairman Patrick Wood, Texas Public Utilities Commission, before Texas House of Representatives Committee on State Affairs, Subcommittee on Cable and Broadband, Transcript of Proceedings, pp. 32-34 (May 2, 2000).

wholesale services that enable providers of prepaid cards, international, and other services to offer retail services that are routed over IP networks of wholesale providers and the terminating local exchange services that the wholesale providers obtain.²⁶ At the same time, Net-2-Phone and other firms who initially offered retail services that allowed higher-quality computer-to-computer and computer-to-phone services are now providing retail services that can be accessed either from phones or from PCs.²⁷ The foregoing services do not pass information that would enable LECs to determine whether particular calls are phone-to-phone IP voice communications services or computer-to-phone or other enhanced services.

During this period, various types of CPE also have been developed that convert voice signals into IP. IP phones and IP PBXs have been developed and previously installed PBXs can be upgraded to perform those conversions.²⁸ For these and other reasons FCC Chairman Powell has cautioned against piecemeal regulation of VoIP. In a keynote speech to the U.S. Telecom Association's annual conference Chairman Powell expressed concern that in the current approach to VoIP issues "we don't regulate what's right, but that we regulate by accident". He called for a "thorough discussion" of VoIP and "raised questions about recent state initiatives to regulate voice-over-Internet protocol services and wireless services, citing those as examples of the kind of 'regulating by accident' that the industry needed to avoid."²⁹ In order to address these

²⁶ See, e.g., 2002 Probe Research Report, at 20-24; Wylie Wong, *Net-2-Phone To Offer Services to Small Businesses*, CNET News.Com, Feb. 22, 2000, available at www.news.com.com/2100-1033-237122.html?tag=rn (offering details of Net-2-Phone's IP Telephony services).

²⁷ See 2002 Probe Research Report, at 20-27.

²⁸ *Id*

²⁹ See Telecommunications Report, October 15, 2003.

issues, the FCC has indicated that it may begin an inquiry of VoIP telephony before the end of this year.³⁰

In the most recent judicial decision considering VoIP the United States District Court for the District of Minnesota issued a permanent injunction barring the enforcement of a decision of the Minnesota Public Utilities Commission (MPUC) that required Vonage, a provider of VoIP services, to comply with Minnesota statutes and regulations governing telephone service.³¹ In that case the federal District Court found:

Congress has spoken with unmistakable clarity on the issue of regulating the Internet: "It is the policy of the United States ... to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. § 230(b); see also *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 544 (8th Cir. 1998) (concluding that, based on Congress's intent to leave Internet unregulated, ISPs should be excluded from the imposition of interstate access charges); *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir 1997) (recognizing that "Congress acted to keep government regulation of the Internet to a minimum").

Because of the expressed Congressional intent that Internet-based services must remain unregulated by the Communications Act, and because the MPUC attempted to exercise state authority to regulate those services, the Court concluded that "state and federal laws conflict, and pre-emption is necessary."³²

³⁰ Howard Buskirk, DSL, VoIP, Intercarrier Compensation Top FCC's Wireline Agenda This Fall, TR DAILY, (Sept. 17, 2003).

³¹ See *Vonage Holding Corporation v. The Minnesota Public Utilities Commission et al*, Civil No. 03-5287 (MJD/JGL), Memorandum and Order, October 16, 2003 granting a permanent injunction against the enforcement of the MPUC's decision in *In the Matter of the Complaint of the Minnesota Department of Commerce Against Vonage Holding Corp. Regarding Lack of Authority to Operate in Minnesota*, Docket No. P-6214/C-03-108 (Minn. Pub. Utils. Comm'n, Sept. 11, 2003) (Order finding jurisdiction and requiring compliance).

³² *Vonage v. MPUC*, *supra*, at p. 17.

II. JURISDICITON OF VOIP SERVICES

A. VoIP Should be Treated as an “Information Service”.

Important to the determination of the Commission’s jurisdiction is the evolving nature of VoIP services, which are truly a nascent service. The evolving and integrated nature of IP services potentially renders regulations designed for traditional telecommunications inappropriate and inherently arbitrary. IP technology permits an array of integrated enhanced and basic service offerings to be provided over a single platform. IP technology blurs distinctions traditionally drawn between services such as local and long distance calling, voice, fax, data and video, making it impossible to form rational and non-transient regulations.³³ The multi-functional nature of the IP network means that a phone-to-phone IP voice call could be integrated with other, enhanced services, or, alternatively, the call itself could have enhanced functions. A service that might at its inception arguably meet the technical definition of a “telephonic message” could be combined with features that render it an enhanced service within a short period of time. Because of the rapid evolution of such services, regulatory categories that initially appear appropriate for such services could quickly prove to be inapposite.

The FCC foresaw these current difficulties in the *Universal Service Report*, where it observed that any attempt to distinguish between phone-to-phone and other forms of IP voice communications could “be quickly overcome by changes in technology.”³⁴

³³ Indeed, voice is actually merely one application of an integrated voice, data, and enhanced services platform, and voice services are not stand-alone offerings, but can inherently be combined with other applications. Even those voice services that are currently stand-alone will likely evolve into integrated services provided over an enhanced services platform. As IP communication develops, the trend is toward hybrid applications that offer voice along with a variety of data services.

³⁴ *Universal Service Report*, ¶ 90.

Importantly, FCC Chairman Powell separately recognized that any attempt to impose access charges on VoIP services on the ground that they currently resemble basic telecommunications services risks being “almost immediately frustrated by innovative changes to the service and technology that these advanced networks allow.”³⁵

B. The Commission Should Forebear From Exercising Jurisdiction.

Even if the Commission determined that it had jurisdiction over VoIP services, it should forbear from regulating those services at this time. The fact remains that currently VoIP is, at best, an emerging technology that is still in its infancy. VoIP thus should not be burdened by regimes that were developed for earlier forms of voice communications. Indeed, the imposition of those requirements now, at this early state in the development of VoIP, could have the perverse effect of stifling progress in that development, to the detriment of consumers.

VoIP represents the type of innovation in technology that the Alabama legislature intends to promote:

It is hereby declared to be the public policy of this state to encourage the development of advanced telecommunications capabilities, cable, interactive computer, and Internet facilities and services to better serve the public and further industrial economic development in this state. It is necessary for growth, job opportunities, and sustained economic development to encourage new investment in advanced telecommunications capabilities, cable, interactive computer, and Internet facilities ...
(Alabama Code, § 11-50B-1).

Consistent with the policy enunciated in § 11-50B-1 above, the Commission thus should be looking for ways to facilitate the availability of those services and their

³⁵ *Id.* At 11,625 (Powell, Commissioner, concurring).

associated benefits. And one clear way to enable the efficient development of VoIP as a potential consumer offering is to refrain from regulating it at this time.

The regulatory framework that governs “traditional” wireline traffic does not and should not apply to VoIP services. This is particularly true in the case of the existing intercarrier compensation regimes that currently afflict long distance calling. Because all forms of VoIP are currently treated as information services, VoIP is not subject to above-cost carrier access charges. Rather, VoIP providers currently are permitted to originate or terminate the service through the purchase of end user lines at a LEC’s retail rates – a mechanism that the FCC has found fully compensates the originating LEC³⁶, and compensation to any carrier terminating such traffic would come in the form of cost-based reciprocal compensation rates.

Even if VoIP services – or some subset of them – were not properly categorized as “information services”, however, it would still be inappropriate to burden them with the ILEC’s inflated access charges. Prematurely subjecting new technologies like VoIP to inefficient access charges would likely block their development. Moreover, attempting to arbitrarily distinguish among the various types of VoIP offerings by imposing access charges on some, but not others, would unfairly discriminate against certain VoIP services and service providers, and would inappropriately and artificially skew research and development (and thus innovations) in technology away from those services.³⁷

³⁶ *In the Matter of Access Charge Reform*, CC Docket No. 96-262, First Report and Order, rel. May 16, 1997, ¶ 346.

³⁷ Imposing access charges on VoIP services also could present significant operational difficulties. For example, the work involved in segregating and monitoring phone-to-phone VoIP calls to determine if the particular traffic was an information or telecommunications service could be substantial, if it is even possible to accomplish in the first place.

The FCC, in its *Universal Service Report* tentatively concluded that certain VoIP configurations (such as “computer-to-computer” and “computer-to-phone”) were information services, while other configurations appeared to have the characteristics of telecommunications services (phone-to-phone).³⁸ However, the FCC determined that it was better public policy to continue treating phone-to-phone VoIP as an information service, including continuing the applicability of the ISP exemption from the access charges applicable to circuit-switched long distance traffic.³⁹ The FCC therefore continued its policy of exempting all VoIP services from access charges pending the outcome of future proceedings.

That policy remains in effect, and should be followed by this Commission in its consideration of VoIP issues. At a minimum, the Commission should refrain from ordering the imposition of carrier access charges on any form of VoIP service until the FCC resolves existing dockets bearing directly on this matter. The FCC’s decisions in those proceedings should enable state commission across the nation to apply consistent policies for the treatment of all terminating traffic. It would be economically and administratively inefficient to undertake an examination of these same issues while they are still pending before the FCC.

If the Commission is determined to continue its inquiry of VoIP services, AT&T recommends that the Commission first examine the interplay between the nature of VoIP services as they develop and their regulation on the federal level, prior to concluding Commission jurisdiction. In order to address VoIP services in more detail, the

³⁸ *Universal Service Report*, ¶¶ 87-89.

³⁹ *Id.* ¶91.

Commission may wish to consider conducting workshops. It is in such an informal setting that considerable progress can be made to further define the complexities of VoIP services. Gaining an understanding of the variety of VoIP services and likely innovations will enable the Commission to determine whether this is an appropriate time to hold further workshops to address whether such services are “information services”, as the FCC considers them to be today.

III. Loss of Revenue Will Not Endanger the Ability of the ILECs to Maintain Carrier of Last Resort Obligations.

In their Petition⁴⁰ the ILECs allege that the loss of revenue – presumably from the lack of switched access charges associated with VoIP traffic – could endanger the ILECs’ ability to maintain their carrier of last resort obligations. It is noteworthy that the ILECs fail to offer any kind of explanation or support as to how the lack of switched access revenue from VoIP service providers would cause them to default on their carrier of last resort obligations. It is noteworthy because regardless of their failure to explain, this allegation is completely without merit. First, the amount of traffic being completed over VoIP services is miniscule compared to that for which access charges are currently being paid. As stated several times in these comments, VoIP technology is in its infancy and is not currently a viable substitute for traditional wireline services. Therefore, even if switched access charges were required for VoIP services (which they should not be), the amount would be relatively small and the absence of such revenue should not impact carrier of last resort obligations.

Second, ILECs fought long and hard to escape the stringent requirements of rate of return regulation. Their efforts were finally rewarded when the Commission allowed

⁴⁰ Petition for Declaratory Order Regarding Classification of IP Telephony Service, p. 4 (July 31, 2003).

the ILECs to be regulated pursuant to price regulation plans in order to better meet the demands of a “competitive” marketplace and have the ability to rebalance rates as needed. If the ILECs need additional revenue – as they infer in their Petition – they can exercise the freedom they won under price regulation to adjust their rates accordingly.

Third, it is obvious why the ILECs are hoping to have switched access charges applied to VoIP traffic. Switched access rates are set hundreds of times above their cost and the profit margins that potentially would be available to the ILECs would be much greater than the rates for reciprocal compensation or other applicable rates for local service. The real problem, therefore, lies in the excessive rates being charged for switched access. The solution is rather simple – lower switched access rates to cost-based levels.

Switched access services are functionally equivalent to local interconnection services and they should be priced the same. In Docket No. 27821 the Commission established cost-based rates for the unbundled network elements (UNEs) associated with local interconnection at \$.0026.⁴¹ By contrast, the average rate for two ends of switched access for all independent companies in Alabama is in excess of \$.07 per minute of use – an amount that is almost 2,600% above the equivalent cost-based rate. AT&T recommends that the Commission take immediate steps to begin lowering intrastate switched access rates of all ILECs in Alabama to cost based levels that are at least equivalent to the level of the ILECs’ local interconnection rates. An appropriate

⁴¹ The figure of \$.0026 is the UNE cost comparable to two ends of switched access and is based on BellSouth data in Docket No. 27821. See *In Re: Generic Proceeding to Establish Prices for Interconnection Services and Unbundled Network Elements*, Order May 31, 2002. UNE cost data is not available for the other ILECs. However, even if one assumes that other ILECs’ UNE costs are twice that of BellSouth, there is still a huge disparity between cost and current prices for switched access services.

proceeding to consider the reduction of switched access charges would be Docket 28590 in which the ILECs are seeking even further streamlined regulation.

CONCLUSION

VoIP services represent a new technology in the delivery of communications and are in their early stage of development. As such, this Commission should recognize that VoIP should be treated as “information” or “enhanced” services that should not be burdened with the regulatory requirements of traditional “telecommunications services” and in particular subject to the application of switched access charges. VoIP holds the potential for providing additional consumer choice, helping spur increased demand for broadband services (thereby providing the incentive to increase deployment of broadband services and availability in Alabama), and ultimately transforming the way we communicate. The imposition of unnecessary regulatory requirements and inflated access charges on VoIP services would only stifle their continued development and have an adverse impact on increased consumer choice and broadband deployment. Even if the Commission determines that it has jurisdiction to consider regulation of VoIP services, it should forebear from exercising that jurisdiction until after the FCC has had an opportunity to thoroughly examine the issues and determine appropriate regulatory schemes for these new and evolving services – action that the FCC has indicated it will consider before the end of this year. In the meantime, the Commission should take appropriate action in Docket No. 28590 to reduce intrastate switched access rates to cost-based levels.

Respectfully submitted this 31st day of October 2003.

A handwritten signature in black ink, appearing to read "Robin Laurie". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Robin Laurie, Esq.
Balch and Bingham L.L.P.
2 Dexter Avenue
Montgomery, AL 36104
Telephone: (334) 834-6500

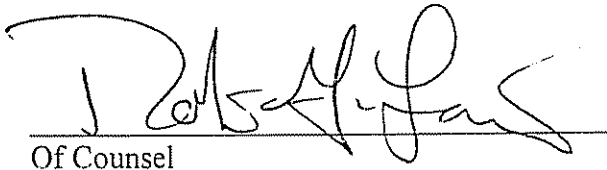
Attorney for AT&T
Communications of the South
Central States, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the following listed persons by placing a copy of same in the United States mail, postage prepaid and properly addressed on this 31st of October, 2003:

Francis B. Semmes, Esquire
BellSouth
3196 Highway 280 South
Room 304N
Birmingham, Alabama 35243

Mark D. Wilkerson, Esquire
Brantley & Wilkerson
P. O. Box 830
Montgomery, Alabama 36101-0830



Of Counsel